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FILED 10 JUN 7 15:02 USDC-ORF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FLIR SYSTEMS, INC., an Oregon
corporation,

Plaintiff,

v.

PATENT ENFORCEMENT COMPANY,
an Oregon company

Previously:

THOMAS L. GAMBARO, an individual;
and **MOTIONLESS KEYBOARD**
COMPANY, an Oregon corporation

Defendants.

Case No. CV 10-0231-BR

**DEFENDANT MOTION 05 UNDER
RULE 37 (a) FOR DISCOVERY BY
SCHWABE, WILLIAMSON, WYATT**

DEMAND FOR JURY TRIAL

MOTION 05 FOR COURT ORDER OF DOCUMENT PRODUCTION NO. 1

Pursuant to Rule 37 (a) the Defendants in this case that are U.S. Patent No.
5,332,322 and PATENT ENFORCEMENT COMPANY, an Oregon company
respectfully request the Court order discovery in this case from SCHWABE,
WILLIAMSON, & WYATT to allow access to all documents in evidence for the ongoing
production of documents requested and the previous case, *Motionless Keyboard*
**DEFENDANT MOTION 05 UNDER RULE 37 (a) FOR DISCOVERY BY
SCHWABE, WILLIAMSON, WYATT**

Company v. Microsoft Corporation et al. case, specified as DOCUMENT

PRODUCTION NO. 1, DOCUMENT PRODUCTION NO. 1A and DOCUMENT

PRODUCTION NO. 1B. The text of the request is included below:

DEFENDANTS REQUESTS FOR FLIR DOCUMENT PRODUCTION NO. 1

All documents that refer or relate to communications between Christopher J. Lewis and/or any other attorney(s) in the firm SCHWABE, WILLIAMSON, & WYATT within the scope of representation by Christopher J. Lewis and/or other attorneys in the firm SCHWABE, WILLIAMSON, & WYATT and client Tom V. Robinson of Portland, Oregon including all documents, billing and communications back to January of 2000.

RESPONSE

See PATENT ENFORCEMENT COMPANY EXHIBIT 10 filed with this motion.

This request for DOCUMENT PRODUCTION NO. 1 was made May 27, 2010.

A subsequent discovery request was made that is DOCUMENT PRODUCTION NO. 1A in an email message dated May 29, 2010 shown on Page 4 of 4.

A further discovery request was made that is DOCUMENT PRODUCTION NO. 1B in an email message dated May 31, 2010 shown on Page 2 of 4.

SCHWABE, WILLIAMSON, & WYATT have to date made two refusals for DOCUMENT PRODUCTION NO. 1 related requests in email dated May 28, 2010 on Page 3 of 4 and also on June 6, 2010 on Page 1 of 4.

Further support for the request for relief DEFENDANT MOTION 05 is contained in the DECLARATION OF THOMAS L GAMBARO IN SUPPORT OF MOTION 05.

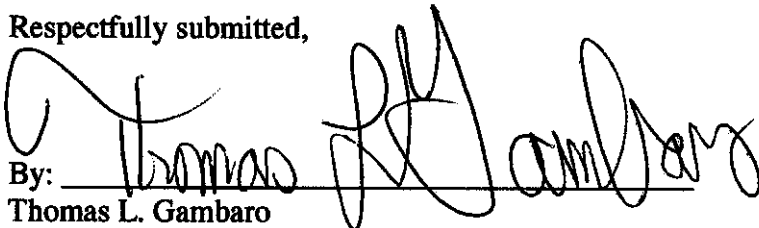
**DEFENDANT MOTION 05 UNDER RULE 37 (a) FOR DISCOVERY BY
SCHWABE, WILLIAMSON, WYATT**

Pg 2 of 4

DEFENDANTS THOMAS L GAMBARO, U.S. PATENT No. 5,332,322,
MOTIONLESS KEYBOARD COMPANY, and PATENT ENFORCEMENT
COMPANY respectfully requests the granting of **DEFENDANT MOTION 05 UNDER
RULE 37 (a) FOR DISCOVERY BY SCHWABE, WILLIAMSON, WYATT** the
grounds for the Court to approve DEFENDANT MOTION 05 including provisions for
further refusals on discovery to be pursuant Rule 37 (b) with sanctions to the fullest
extent of the statutes and applicable laws.

Dated: June 7, 2010

Respectfully submitted,


By: _____

Thomas L. Gambaro

Email: thom.gambaro@gmail.com

PATENT ENFORCEMENT COMPANY

MOTIONLESS KEYBOARD COMPANY

P.O. Box 14741

Portland, Oregon 97293-0741

Telephone: 503-544-0589

From: DNewman@SCHWABE.com
Subject: RE: Discovery
Date: June 6, 2010 9:47:05 PM PDT
To: thom.gambaro@gmail.com
Cc: CLewis@SCHWABE.com, bsorensen@schwabe.com

Mr. Gambaro,

This email is to notify you that although we have identified no true conflict of interests exists that precludes us from representing FLIR, Schwabe has decided to withdraw as local counsel in this case. We will soon file a notification with the court.

We are in the process of identifying new local counsel, but in the meantime, please correspond directly with Texas counsel regarding this case. I believe you have their contact information, but am providing it below:

William A. Brewer III
Email wab@bickelbrewer.com
Michael J. Collins
Email mjc@bickelbrewer.com
Farooq A. Tayab
Email fat@bickelbrewer.com
BICKEL & BREWER
4800 Comerica Bank Tower
1717 Main Street
Dallas, TX 75201-4612
Telephone 214.653.4000
Fax 214.653.1015

We will notify you once replacement local counsel has been identified. In the meantime, you may continue to serve FLIR by delivering documents to our offices. We will ensure the documents are given to FLIR and its counsel.

As Schwabe's withdrawal moots the issue of Defendants' Request for Production No. 1, FLIR will not produce those documents. FLIR will timely respond to Defendants' Request for Production.

Again, from this point forward, please correspond directly with Texas counsel regarding all issues in this case. Thank you,

Devon Newman

From: thom.gambaro@gmail.com
Subject: DOCUMENT PRODUCTION No. 1B
Date: May 31, 2010 9:21:35 PM PDT
To: CLewis@SCHWABE.com, bsorensen@schwabe.com
Cc: MJC@bickelbrewer.com, FAT@bickelbrewer.com,
wab@bickelbrewer.com, Bill.Powell@flir.com

Greetings,

The attached will be filed Tuesday June 1st.

Document Production No. 1B is all materials documents emails recordings and financial records regarding the Motionless KEyboard Company v Microsoft Corporation offer by Nokia Corporation for out of court settlement for infringements of the U.S. Patent No. 5,332,322. All documentation and date sequence of the settlement offer and what was done with the funds after the offer.

Best,

Thom Gambaro
PATENT ENFORCEMENT COMPANY

From: DNewman@SCHWABE.com
Subject: RE: Discovery
Date: May 28, 2010 3:55:39 PM PDT
To: thom.gambaro@gmail.com, CLewis@SCHWABE.com
Cc: bsorensen@schwabe.com

Mr. Gambaro:

Thank you for your clarification email. Mr. Lewis is out, and I am responding on FLIR's behalf.

We are working diligently on responses to Defendants' discovery requests and will have them to you in due course. We are willing to work with you to provide access to nonprivileged documents responsive to Request No. 1 in advance of the due date established under the federal rules (June 16th) because we understand you believe these documents are necessary for you to view before the hearing. Schwabe will work to make the pertinent non-privileged documents available for your inspection and copying as specified in the federal rules.

Before any production can occur, however, we need your agreement that this accommodation does not extend to any of the other document requests you propounded, and is subject to the objections that we set forth in the written response to your document request number 1. In particular, FLIR will object to the scope of the documents requested in Request No. 1 on the basis that the Request is overbroad because the work performed for Mr. Robinson regarding IRS filings for MKC was of a very limited duration in time, beginning long after 2000. FLIR will not provide billing documents because MKC was never billed for any work performed by Schwabe. Finally, FLIR will not provide any documents that are privileged and not related to the limited issue of IRS filings for MKC.

We anticipate being able to update you on our progress by the end of next week.

Thanks,

Devon Newman

From: thom.gambaro@gmail.com
Subject: Re: Discovery
Date: May 29, 2010 7:13:48 AM PDT
To: DNewman@SCHWABE.com
Cc: CLewis@SCHWABE.com

Mr. Newman,

I will look forward to all documents including billing information relating to Tom V. Robinson and MKC during the period specified that was the time of the conflict of interest as written in DOCUMENT PRODUCTION NO. 1. I specified the year 2000 because I was not sure of when the MKC work by SCHWABE was done.

The tone of your response indicates we may have a problem because during the Motionless Keyboard Company v Microsoft Corporation very non related discovery was demanded including personal email messages from friends having nothing to do with the case. The excuse given for the unjustified discovery was that being the defendants have the rights to construct a proper defense. Well now I am the defendant and will expect the same from FLIR to provide all the documents I request.

I will expect as well that you provide an OUTSIDE COUNSEL ONLY agreement to allow access to all documents from the Motionless Keyboard Company v Microsoft Corporation for my review on CD as well. You may consider this DOCUMENT PRODUCTION NO. 1A. These are all related to your only argument for non-infringement that is associated with the Aiken rulings. I will expect that you understand that I am the defendant now and will continue to request documents until they are produced.

I need to know immediately if there is going to be a problem with DOCUMENT PRODUCTION NO. 1A.

Best,

Thom Gambaro
PATENT ENFORCEMENT COMPANY
P.O. Box 14741
Portland, OR 97293-0741
503-544-0589 mobile
thom.gambaro@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 8, 2010, a true copy of the foregoing **DEFENDANT MOTION 05 UNDER RULE 37 (a) FOR DISCOVERY BY SCHWABE, WILLIAMSON, WYATT** was served to the following counsel by hand delivery, electronic filing via e-mail with electronic signature and first class mail:

Christopher Lewis, OSB #003079
Email: clewis@schwabe.com
Devon Zastrow Newman, OSB #014627
Email: dnewman@schwabe.com
SCHWABE, WILLIAMSON, & WYATT
1211 SW Fifth Avenue, Suite 1900
Portland, Oregon 97204-3735
Telephone: 503-222-9981
Facsimile: 503-796-2900

William A. Brewer III
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Michael J. Collins
Email: mjc@bickelbrewer.com
Farooq A. Tayab
Email: fat@bickelbrewer.com
BICKEL & BREWER
4800 Commercial Bank Tower
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Dallas, Texas 75201-4612
Telephone: 214-653-4000
Facsimile: 214-653-1015

Respectfully submitted,

June 7, 2010

By:



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